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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 16 OF 2002

State through
Superintendent of Police
CBI(Sp. Crime Branch)
A2 Wing 8th Floor,
CGO Complex, CBD,
Belapur, New Bombay,
Mumbai. ... Applicant

versus

1. John Anthony Harold
   Barros s/o late John
   Victor Dias near Banyan
   tree, Jaleekni Bagh,
   Kaunsowala, Siolim, Goa.
   Room Service Boy,
   Hotel Nova Goa,
   Panaji-Goa.

2. Charles Peril Terry Barros
   s/o late John Victor Dias,
   near Banyan tree, Jeleekni
   Bagh, Kaunsowala, Siolim,
   Goa. Martial Artist in
   Karate.

3. Prakash Naik
   s/o. late Shankar Naik
   House No.927, (New No.253)
   Wadabhat, Neura, Ilhas Goa,
   Room Service Boy,
   Hotel Nova Goa, Panaji-Goa. ... Respondents

Mr. Joseph Vaz, Special Public Prosecutor for the Applicant.

Mr. S. A. Samant, Advocate for the Respondent No.3, absent.

CORAM : N. A. BRITTO, J.

DATE : 27TH APRIL, 2006.

ORAL ORDER

Heard Mr. Joseph Vaz, the learned Special Public Prosecutor on behalf of the applicant/complainant. None present on behalf of the respondents/accused although earlier respondent no.3 was represented by learned Counsel Mr. S. A. Samant.

2. This revision, against Order dated 23-11-2001 of the learned Sessions Judge, Panaji, discharging the accused under Sections 302 and 392 I.P.C. was filed before this Court on or about 21-2-2002 and the Applicant inspite of various efforts was unable to effect service on Respondent nos.1 and 2. Subsequently a last opportunity was given to the applicant on 2-2-2006 to secure the presence of Respondent nos.1 and 2 and failing which it was ordered that this revision petition would be

decided on merits against Respondent no.3. Again, on 23-3-2006 it was further made clear that no adjournment would be granted.

3. The respondents/accused came to be discharged by Order dated 23-11-2001 of the learned Sessions Judge and this revision has been filed against the said Order.

4. The facts giving rise to the filing of this revision is that in Hotel Nova Goa a guest by name Eamon Peter Helly, a British National was found dead in room no.203. He was found with his body in prone position with his hands and legs tied behind and throat slitted. A complaint was filed by the Manager of the said Hotel Shri Estacio D'Souza. The post mortem carried out subsequently showed that the cause of death was due to haemorrhage and shock as a result of the cut throat injuries. Initially a case under Section 174 of the Code of Criminal Procedure, 1973 was registered but subsequently Crime No.332/92 came to be registered. A-1/John Barros and A-3/Prakash Naik were working as room boys in the said Hotel and came to be suspected as having been involved in the said murder and robbery. A-2/Charles Barros is the brother of

A-1/John Barros. Initially the case was investigated by Shri U. Y. Gaonkar, Police Inspector of Panaji Police Station but subsequently the case was handed over to the applicant-CBI. After investigations the applicant/CBI finalised the case and presumably as A summary and whilst sending the said final report the applicant-CBI gave sufficient reasons which are set out in para 7 of the Judgment of the learned Sessions Judge. In other words, there were 10 reasons given but the applicant to close the case for want of evidence.

5. The learned Chief Judicial Magistrate, Panaji by his Order dated 10-10-1997 allowed the applicant-CBI to close the case and one of the main reasons then given was that there were no eye witnesses; no recovery of weapon was made, no motive was established etc..

6. Subsequently on or about 17-2-1998 the applicant-CBI requested the Chief Judicial Magistrate to re-open the investigations and the reasons in support thereof given by the applicant-CBI are recorded in para 8 of the Judgment of the learned Sessions Judge. What made the applicant-CBI to re-open

the case was, inter alia, that the viscera of the deceased was found with fatal dose of morphine; semen stains were found on the bed sheet; and further investigations were also required to be carried out in Saudi Arabia. The learned J.M.F.C., therefore, by Order dated 18-2-1998 permitted the applicant-CBI to re-open the case for further investigations.

7. It appears that after re-opening of the investigations a shirt which was attached earlier on 28-7-1992, A-3/Prakash Naik was made to wear in presence of panch witnesses and it fitted him. This was done after a gap of almost 7 years. It also appears that a statement of the brother of the deceased was recorded who had stated that the deceased was fond of products of the brand named "St. Michael" manufactured in U.K. Earlier, it appears that an overcoat having the said brand name was stated to have been given by A-1/John Barros to his brother A-2/Charles Barros and it was earlier stated by the applicant-CBI that no confirmation was available on the said giving of the overcoat, as aforesaid. In other words, the only fresh evidence which was collected at the second time was that the said shirt which was earlier found in the first round of investigation on

28-7-1992 in the residence of A-3/Prakash Naik fitted him on 17-5-1998 when he was made to wear the same, and, the learned Sessions Judge observed and, in my view rightly, that the said shirt which was attached on 28-7-1992 and which A-3/Prakash Naik was made to wear on 17-5-1998 was not attached at the instance of A-3/Prakash Naik nor the applicant had produced any evidence to show that the said shirt belonged to A-3/Prakash Naik and, therefore, the learned Sessions Judge came to the conclusion that the accused could not be connected on the basis of the additional evidence collected by the applicant-CBI.

8. The learned Special Public Prosecutor Mr. Vaz has not been able to point out to any other evidence on record, other then the evidence which has been referred to by the learned Sessions Judge in his Order dated 23-11-2001. If the applicant-CBI had chosen to finalise the case inspite of the said shirt having been found with the same blood group as that of the deceased, in my view, no fresh charge-sheet could have been filed against A-3/Prakash Naik and much less against the other accused only by making A-3/Prakash Naik wear the said shirt

and opine that the said shirt was fitting A-3/Prakash Naik. The action on the part of the applicant-CBI in filing a charge-sheet after the case was finalised once, without collecting any further evidence was nothing but a highhanded action meant to persecute the accused in the absence of any evidence whatsoever.

9. There is no merit in this revision and the same is hereby dismissed.

N. A. BRITTO, J.

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